

Message Text

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ORIGIN PM-04

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P 031933Z SEP 75 ZFF4
FM SECSTATE WASHDC
TO AMEMBASSY HELSINKI PRIORITY

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TODEP-13

E.O. 11652: NA
TAGS: MARR, MNUC
SUBJECT: NUCLEAR POWERED WARSHIP (NPW) LIABILITY -
PUBLIC LAW 93-513

1. TO FACILITATE THE READY ACCEPTABILITY OF US NUCLEAR POWERED WARSHIPS (NPW) INTO FRIENDLY FOREIGN PORTS AND SPECIFICALLY TO ESTABLISH US POLICY REGARDING THE HANDLING OF CLAIMS IN THE UNLIKELY EVENT OF DAMAGE ARISING FROM A NUCLEAR INCIDENT INVOLVING THE NUCLEAR REACTOR OF A US NPW, THE CONGRESS ENACTED PUBLIC LAW 93-513, APPROVED DECEMBER 6, 1974. THE LAW EXPRESSES THE POLICY OF THE USG THAT ANY CLAIMS ARISING OUT OF A NPW REACTOR INCIDENT WILL BE PAID BY THE US ON THE BASIS OF ABSOLUTE (NO FAULT) LIABILITY.

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2. AS A RESULT, THE USG IS NOW ABLE TO GIVE AN ASSURANCE THAT IT WILL EXCEPT AS PROVIDED IN PARA 3, ACCEPT LIABILITY FOR CLAIMS FOR BODILY INJURY, DEATH OR DAMAGE OR LOSS OF REAL OR PERSONAL PROPERTY PROVEN TO HAVE RESULTED

FROM A NUCLEAR INCIDENT INVOLVING THE NUCLEAR REACTOR OF A US NPW IRRESPECTIVE OF WHETHER THE INCIDENT RESULTED FROM THE FAULT OR NEGLIGENCE OF SOMEONE OTHER THAN THE USG.

3. AS PROVIDED IN PUBLIC LAW 93-513, SUCH CLAIMS SHALL NOT BE CONSIDERED BY THE US IF THE INJURY, DEATH, DAMAGE OR LOSS WAS INCURRED AS A RESULT OF THE ACTS OF AN ARMED FORCE ENGAGED IN COMBAT OR AS A RESULT OF CIVIL INSURRECTION. IN ADDITION, USG STILL REMAINS FREE TO DENY ANY CLAIM BY OR ON BEHALF OF A PERSON WHO INTENTIONALLY CAUSED A NUCLEAR REACTOR INCIDENT.

4. THE PRESIDENT MAY AUTHORIZE UNDER THE TERMS AND CONDITIONS AS HE MAY DIRECT, THE PAYMENT OF SUCH CLAIMS OR JUDGMENTS FROM ANY CONTINGENCY FUNDS AVAILABLE TO THE GOVERNMENT OR MAY CERTIFY SUCH CLAIMS OR JUDGMENTS TO THE CONGRESS FOR THE APPROPRIATION OF NECESSARY FUNDS. THESE PROVISIONS ARE NOW IN EFFECT AND APPLY TO ANY COUNTRY VISITED BY US NPWS EVEN THOUGH THE HOST COUNTRY MAY NOT HAVE IN EXISTENCE ANY RELEVANT LEGISLATION ON THE SUBJECT.

5. PL 93-513 DOES NOT AUTHORIZE ANY ADDITIONAL FUNDS FOR PAYING NPW CLAIMS OR AUTHORIZE SETTLEMENTS IN ADVANCE OF APPROPRIATIONS. IT IS, HOWEVER, A VALUABLE ASSURANCE THAT USG WILL FOLLOW STANDARD OF ABSOLUTE LIABILITY (I.E., LIABILITY BASED UPON PROOF OF CAUSATION, BUT WITHOUT NEED TO PROVE FAULT). OUR PREVIOUS INABILITY TO ASSURE FRIENDLY FOREIGN GOVERNMENTS THAT CLAIMS WOULD BE CONSIDERED ON THIS BASIS HAS PREVENTED US NPW ACCESS TO PORTS OF SOME COUNTRIES WHICH ARE OTHERWISE WILLING TO ACCEPT PORT VISITS BY SUCH VESSELS.

6. REFERENCE TO PAYMENT OF JUDGMENTS IN PL 93-513 AS DESCRIBED IN PARA 4 SHOULD NOT REPEAT NOT BE CONSTRUED AS INDICATION THAT SOVERIGN IMMUNITY WOULD BE WAIVED
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FOR PURPOSES OF SUITS AGAINST USG OR ITS VESSELS IN FOREIGN COURTS. JUDGMENTS CONTEMPLATED BY STATUTE ARE THOSE ENTERED BY US COURTS OR BY FOREIGN COURTS IN SITUATION WHERE HOST COUNTRY RATHER THAN USG IS DEFENDANT UNDER APPLICABLE STATUS OF FORCES AGREEMENT.

7. THE ABOVE WAS DRAFTED BY PM IN RESPONSE TO A REQUEST BY THE DEPUTY SECRETARY ON SEPTEMBER 1 FOR FURTHER INFORMATION ON THE NPW LIABILITY PUBLIC LAW. ROBINSON

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